IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

76-1237

RUTH FRIEDMAN, et al.,

Petitioners,

-against-

STEPHEN BERGER, individually and as Commissioner of the New York State Department of Social Services, et al.,

Respondents.

BRIEF FOR RESPONDENT IN OPPOSITION TO CERTIORARI

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Opinions Below

The opinion of the Court of Appeals for the Second Circuit is reported at 547 F. 2d 724 and is reproduced as Appendix A to the petition. The opinion of the District Court for the Southern District of New York is reported at 409 F. Supp. 1225 and is reproduced as Appendix B to the petition.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on December 8, 1976. Petitioners invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

Question Presented

Whether a State regulation requiring institutionalized "medically needy" recipients of Medicaid to apply all but twenty-eight dollars and fifty cents of their monthly income to their care and treatment violates the Federal Social Security Act and regulations promulgated thereunder?

Regulation Construed

18 N.Y. Codes, Rules and Regulations § 360.5(e) [Social Services] provides in pertinent part:

> "If an applicant or recipient [of Medicaid] is receiving chronic care in a medical institution or intermediate care facility, all resources in excess of those exempt from consideration in accordance with paragraph (a) of subdivision 2 of section 366 of the Social Services Law and $28.50 per month for personal expenses shall be utilized to meet the cost of medical assistance for such applicant or recipient* * *".

Statement of the Case

Petitioners are in-patients in institutions for chronic conditions who are receiving "Medicaid", 42 U.S.C. § 1396, et seq., but because of their incomes, are otherwise ineligible for Supplemental Security Income (SSI) or other cash public assistance (A2-3).*

* Numbers in parentheses preceded by "A" refers to pages in the appendix to the petition.

Suing under the Civil Rights Laws, 28 U.S.C. § 1343(3); 42 U.S.C. § 1983, petitioners sought declaratory and injunctive relief against enforcement of 18 NYCRR § 360.5(e) on the grounds that it denied to them due process and equal protection of the laws under the Fourteenth Amendment to the Federal Constitution and is otherwise in conflict with the pertinent provisions of the Social Security Act and Regulations. Petitioners claimed that they are required to "spend down" to all but $28.50 per month of their income whereas recipients of SSI receive the use of an additional $20.00 per month. Plaintiffs also sought to prosecute their claims as a class action (A3-4).

In accordance with the rule against unnecessary determination of constitutional issues, Hagans v. Lavine, 415 U.S. 520, 536, 543-544 (1974); Peters v. Hobby, 349 U.S. 331, 338 (1955), the District Court first addressed itself

to the issue of whether 18 NYCRR § 360.5(e) conflicted with federal law or regulation. Having found no such conflict, the District Court dismissed the action (A27-28). Class action treatment was denied on the ground that the proposed class of "Medicaid recipients having incomes of in excess of $45 per month" lacked legal meaning (A25-26). Petitioners' motion for reargument was also denied, pet. p. 21.

The Court of Appeals affirmed (A5). It found that income "disregarded" in determining eligibility for SSI was also disregarded in determining eligibility for Medicaid (A6-8) and further, that there was no violation of the "comparability" rule, 42 U.S.C. § 1396a(a)(17); 45 C.F.R. § 248.3(c)(1)(ii)(B)(2), since "categorically needy" recipients of SSI and Medicaid were required to spend down to the same degree as petitioners (A9-11). The Court found that the spend down requirement did not violate the prohibition against cost sharing or other changes

42 U.S.C. § 1396a(a)(14)(A), (A12). That the Court found that the regulation at bar did not conflict with the congressional intent of assuming that the Medicaid benefits would not go below the amount needed for maintenance (A13). The Court observe that its interpretation of the statute was in accord with that of the Department of Health Education and Welfare as expressed in HEW Policy Information Memo No. 74-11 (March 15, 1974), (A14) and in a letter to petitioners' counsel (A16).

REASONS FOR DENYING THE WRIT

Petitioners have failed to raise any question of general importance warranting the exercise of this Court's certiorari jurisdiction, S. Ct. Rules, Rule 19(1)(b).

As far as the record shows, the regulation at bar is peculiar to the State of New York; bearing no resemblance to any statute or regulation in any other jurisdiction.

Neither is there any question that this case is governed by the "Supremacy Clause", U.S. Const., Art. VI, clause 2; or that courts will defer to the interpretation given to a statute or regulation by the agency responsible for its enforcement provided it is not contrary to the intent of Congress, Morton v. Ruiz, 415 U.S. 199, 237 (1974); Dublino v. N.Y. State Dept. of Social Services, 413 U.S. 405, 421 (1973); Udall v. Tallman, 380 U.S. 1, 16 (1964); pet. p. 32.

What remains is a question of statutory construction of purely local interest.

The analysis of the statutes and regulations by the Court of Appeals, conforms both to the intent of Congress (A13) and the interpretation of the Department of Health Education and Welfare which must administer them (A14-16). Petitioners' theory of the action, albeit imaginative, is unsupported by any other authority.

Nevertheless, even if the question sought by petitioners to be reviewed is fairly debatable or of academic interest, petitioners have failed to show that it is of sufficient general importance, Rice v. Sionx City Cemetary, 349 U.S. 70, 74 (1955) or the subject of conflicting decisions, United States v. Muniz, 374 U.S. 150, 151 (1963) as to justify a grant of certiorari.

CONCLUSION

CERTIORARI SHOULD BE DENIED

Dated: New York, New York
April 20, 1977

Respectfully submitted,

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